CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 523.

THE UNITED STATES

vs.

ANTONIO MORENA.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED JUNE 5, 1917.

SUPREME COURT OF THE UNITED STATES.

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1 In the United States Circuit Court of Appeals for the Third Circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
ANTONIO MORENA, APPELLEE. } No. 2219, March term, 1917.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

Before Buffington, McPherson, and Woolley, circuit judges.

Certificate to the Supreme Court.

This cause comes before this court on appeal from a decree of the District Court of the United States for the Western District of Pennsylvania dismissing proceedings instituted by the United States for the cancellation of a certificate of citizenship.

On December 15, 1905, Antonio Morena, an alien, declared his intention to become a citizen of the United States in conformity with the law then in force. On June 29, 1906, "An act to establish a Bureau of Immigration and Naturalization and to provide for a uniform rule for the naturalization of aliens throughout the United States" (Chapter 3592, 34 Stat., 596) was enacted, the provisions of which, so far as they are pertinent to the matter in issue, are as follows:

"SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

"First. He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized
2 deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States * * *: *Provided, however*, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

"Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition" for citizenship.

On December 21, 1914, Antonio Morena appeared in the District Court of the United States for the Western District of Pennsylvania and filed his petition for citizenship in the manner prescribed by the second paragraph of section 4 of the act, based upon his said declaration of intention, as permitted by the proviso of the first paragraph of the same section. On April 6, 1914, he was duly admitted to citizenship. In January, 1915, the United States filed in the said court a bill praying that the order admitting Antonio Morena to citizenship be vacated and his certificate of citizenship be canceled, upon the ground, inter alia, that the said certificate was void, because it had been granted upon a petition filed more than seven years after the petitioner had made his said declaration of intention and more than seven years after the enactment of the said statute.

In view of the lack of uniformity in the administration of the "Act * * * to provide for a uniform rule for the naturalization of aliens * * *" arising from conflicting decisions in different jurisdictions upon questions here in issue, and in order to be guided to a proper decision of those questions as they appear upon the record, the United States Circuit Court of Appeals for the Third Circuit desires the instruction of the Supreme Court, and accordingly certifies the following questions under section 239 of the Judicial Code:

(1) Is a declaration of intention made before the naturalization act of 1906 saved by the proviso of the first paragraph from the seven-year limitation of the second paragraph of section 4 of the act?

(2) Is an alien who has made a declaration of intention before the act of 1906 required to file his petition for citizenship at a time not more than seven years after the date of such declaration of intention?

3 (3) Is an alien who has made a declaration of intention before the act of 1906 required to file his petition for citizenship at a time not more than seven years after the date of the act?

(Signed) JOS. BUFFINGTON,
JOHN B. MCPHERSON,
VICTOR B. WOOLLEY,
Circuit Judges.

MAY 22, 1917.

(Endorsed:) No. 2219. Certificate of questions for Supreme Court. Received and filed May 24, 1917. Saunders Lewis, jr., clerk.

4 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, Set.

I, Saunders Lewis, jr., clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original certificate of questions for Supreme Court of the United States, in the case of United States of America, appellant, vs. Antonio Morena, appellee, on file, and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia this twenty-sixth day of May, in the year of our Lord one thousand nine hundred and seventeen, and of the independence of the United States the one hundred and thirty-first.

[SEAL.] SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

(Indorsement on cover:) File No. 25,990. U. S. Circuit Court of Appeals, 3d Circuit. Term No. 523. The United States vs. Antonio Morena. (Certificate.) Filed June 5th, 1917. File No. 25,990.

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES,
v.
ANTONIO MORENA.
No. 523.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and moves the court to advance the above-entitled cause for hearing on a day convenient to the court.

The United States brought suit in the District Court of the United States for the Western District of Pennsylvania to cancel a certificate of citizenship which had been issued to Antonio Morena, an alien, on the ground *inter alia* that the certificate was void because it had been granted upon a petition filed more than seven years after Morena had filed his declaration of intention to become a citizen of the United States and more than seven years after the enactment of the Naturalization Act of June 29, 1906 (34 Stat. 596), which provides:

> SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

> First. He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States * * *: *Provided, however, That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.*
>
> Second. *Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition* [italics ours]

for citizenship.

Morena made his declaration of intention in December, 1905, in conformity with the law then in force and prior to the act of June 29, 1906.

The District Court dismissed the petition and an appeal was taken to the Circuit Court of Appeals for the Third Circuit, which has certified to this court the following questions:

I.

"Is a declaration of intention made before the naturalization act of 1906 saved by the proviso of the first paragraph from the seven-year limitation of the second paragraph of section 4 of the act?"

II.

"Is an alien who has made a declaration of intention before the act of 1906 required to file his petition for citizenship at a time not more than seven years after the date of such declaration of intention?"

III.

"Is an alien who has made a declaration of intention before the act of 1906 required to file his petition for citizenship at a time not more than seven years after the date of the act?"

The questions are of importance to the Department of Labor in the administration of the naturalization laws, and, as the answers of this court will govern that Department in future administration of those laws, an early determination thereof by this court is desirable.

Respondent concurs.

JOHN W. DAVIS,
Solicitor General.

SEPTEMBER, 1917.

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES
v.
ANTONIO MORENA. } No. 523.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

In the certificate submitted to this court by the Circuit Court of Appeals the facts upon which the questions arise are stated as follows:

On December 15, 1905, Antonio Morena, an alien, declared his intention to become a citizen of the United States in conformity with the law then in force. On June 29, 1906, "An act to establish a Bureau of Immigration and Naturalization and to provide for a uniform rule for the naturalization of aliens throughout the United States" (c. 3592, 34 Stat. 596), was enacted, the provisions of which, so

far as they are pertinent to the matter in issue, are as follows:

> SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:
>
> *First.* He shall declare on oath before the clerk of any court authorized by this act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is *bona fide* his intention to become a citizen of the United States * * * ; *Provided, however,* That no alien who, in conformity with the law in force at the date of his declaration has declared his intention to become a citizen of the United States shall be required to renew such declaration.
>
> *Second.* Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition—for citizenship.

On December 21, 1914, Antonio Morena appeared in the District Court of the United States for the Western District of Pennsylvania and filed his petition for citizenship in the manner prescribed by the second paragraph of section 4 of the act, based upon his said declaration of intention, as permitted by the proviso of the first paragraph of the same section. On April 6, 1914, he was duly admitted to citizenship. In January, 1915, the United States filed in the said court a bill praying that the order admitting Antonio

Morena to citizenship be vacated and his certificate of citizenship be canceled, upon the ground, *inter alia*, that the said certificate was void, because it had been granted upon a petition filed more than seven years after the petitioner had made his said declaration of intention and more than seven years after the enactment of the said statute.

The District Court dismissed the bill and an appeal was taken to the Circuit Court of Appeals for the Third Circuit.

Upon the foregoing facts the Circuit Court of Appeals has certified three questions, namely:

1. Is a declaration of intention made before the Naturalization Act of 1906 saved by the proviso of the first paragraph from the seven-year limitation of the second paragraph of section 4 of the act?

2. Is an alien who has made a declaration of intention before the act of 1906 required to file his petition for citizenship at a time not more than seven years after the date of such declaration of intention?

3. Is an alien who has made a declaration of intention before the act of 1906 required to file his petition for citizenship at a time not more than seven years after the date of the act?

ARGUMENT.

The effect of the proviso to the first paragraph of section 4 is to relieve antecedent declarations of intention from the requirements imposed by the act in matters of form, and to give them such standing only in matter of time as if filed contemporaneously with the effectiveness of the act.

(a) The Statute.

Section 4 of the Naturalization Act of June 29, 1906 (c. 3592, 34 Stat. 596), provides:

> That an alien may be admitted to become a citizen of the United States in the following manner *and not otherwise:*

The first paragraph of the section, after prescribing the manner in which all aliens thereafter applying for citizenship shall proceed to declare their intention, and the subject matter of such intention, says:

> That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

By the paragraph immediately following this proviso, it is required:

> Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing,—

It also contains the requirement that the alien shall sign the paper in his own handwriting. Such requirement, if absolute and unmodified, would clearly have

invalidated every existing declaration of intention not actually signed by the applicant. To avoid such a contingency and to indicate that existing declarations were to be treated as extant, an additional proviso was incorporated by way of addendum to the second paragraph of section 4 of the act, the particular words employed to accomplish this purpose being as follows:

> Provided, That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

It is to be observed, also, that section 8 of the act provides:

> That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language * * *. And provided further, That the requirements of this section shall not apply to any alien who has prior to the passage of this Act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration.

(b) The Rationale of the Matter.

The Naturalization Act of 1906 has been denominated a code of procedure. It is obvious that the provisions of section 4 apply with equal force to all naturalization proceedings from and after the date when that act became effective. The particularity of Congress in making the exceptions to which

allusion has been made is hardly consistent with any other interpretation. Thereafter an alien could only be naturalized in accordance with the terms of that act. The integrity of a declaration of intention made prior to 1906 is preserved by the proviso in the first paragraph of section 4. It is equivalent to saying that such a declaration shall be deemed to have been made as of the date of the act.

The other provisions of the act, however, except as to the requirement that the petition shall be signed by the applicant in his own handwriting, and that as to speaking the English language, apply without distinction to those who had made prior declarations, as well as to those who declared their intention at a later date. Manifestly after the present act went into effect, there was no other method by which an alien could be naturalized than as therein prescribed. To hold that the seven-year limitation does not apply to a certain class of applicants, or that it does not begin to run from the date when the act became effective, would result in intolerable chaos in the administration of the law.

The manifest intention of the statute is that a declarant under the old law is placed in substantially the same position as a declarant under the new law and, consequently, must perfect his right to citizenship by proceeding to file his petition within seven years from the effectiveness of the act. It is clear that whatever rights were possessed by an alien who had declared his intention

to become a citizen prior to the going into effect of the act, Congress possessed the power to prescribe the manner and form of proceeding, and the time within which such proceeding should be commenced, in order to enable an old-law declarant to perfect his right to citizenship. Such a construction of the provisions of paragraph 2 of section 4 of the act does not in any way impinge upon the rights already secured to an old-law declarant, but simply prescribes a time limit within which he must file his petition for citizenship.

If an alien who makes a declaration of intention after the act went into effect is bound to file his petition within seven years from the time of making such declaration, it is all the more reasonable to conclude that an alien who has declared his intention under the old law should be required to file his petition within seven years from the date when the present law became operative.

And further, if a declaration of intention made prior to the passage of the Naturalization Act of 1906 is not invalidated by the lapse of seven years from the effectiveness of that act (and the instant case presents a period of more than seven years from the time the law went into effect and more than nine years from the date of the declaration), then there must exist a lack of uniformity in the application of the law so long as there remains outstanding any such declaration of intention.

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It is manifestly desirable that all aliens should proceed to file their petitions for admission to citizenship within a reasonable time, which, under the present act, Congress has fixed as seven years from the date of the filing of the declaration of intention. Holding that an alien who declared his intention to become a citizen prior to the effectiveness of the present law is not bound to observe the period of limitation contained therein would be the equivalent of holding that Congress left in him greater rights and privileges than it bestowed on those who subsequently declare their intention. Such a construction is as unnecessary as it is unsound, for it can not be supposed that Congress intended to exempt such prior declarations from the seven-year limitation, in view of the various provisos contained in the act expressly applicable thereto.

(c) The Decisions Pro and Con.

The question here presented was passed upon in the case of *In re Goldstein et al.* (D. C.), 211 Fed. 163 (1914), wherein the applicants had filed their declaration of intention to become citizens prior to the 28th day of September, 1906, upon which day the present naturalization law went into effect. Each of the applicants filed his petition under the second paragraph of said act, more than two years after the making of the declaration of intention under the former law, but more than seven years after the filing of his declaration, and also more than seven years after the day on which the present law went into effect.

In speaking of the seven-year limitation and the proviso of the first paragraph of section 4 of the act, the court (p. 165) said:

> The provision that no new declaration is needed, and that the old declaration may be used, is followed by the provision that "such declaration" must be used within seven years. These words "such declaration" expressly include the declarations of that class of applicants who need not sign their name because they have declarations made before the passage of this act.
>
> *The beginning of the period of seven years in such cases cannot be postponed beyond the date when the law made all old declarations in effect as if taken out on or dated from the day when the new law went in force. From that date all declarations capable of use under the new law are covered by a seven-year statute of limitations.*
>
> * * * But no intention on the part of Congress is indicated to vary the limitation of time after which a new statement of intention will be required as a prerequisite from any applicant for final papers. [Italics supplied.]

In *Yunghauss* v. *United States*, 218 Fed. 168 (1914), the Circuit Court of Appeals for the Second Circuit, in sustaining the decision of the District Court (210 Fed. 545), said:

> That construction of the law * * * gives effect both to the provisions of the act of 1906 and to the law as it existed prior thereto, without interfering improperly with the rights of applicants for citizenship. It

puts all aliens upon a par as to the time in which their declaration is to be made. A declaration made prior to the act of 1906 is valid, no matter how long prior thereto it may have been made, but after the date of the passage of that act the person who made the declaration has *no superior rights to one who declares thereafter*. In both cases action must be taken within seven years. *It seems to us that this is what Congress intended.* In effect the act says to the alien who has made his declaration prior to 1906: "Your declaration is in all respects valid, but if you wish to become a citizen you cannot delay your application for a period of over seven years from the passage of the act." [Italics supplied.]

In the District Court's opinion, *supra*, it was said (p. 547):

> It is clear, however, that Congress did not intend that old applicants could wait for a longer period than new applicants within which to file the petition. There is no reason why there should be any distinction in this regard between old and new applicants. The purpose of the act in this respect was to require that the applicant should move within a reasonable time, and the Congress fixed seven years as such a reasonable time. It seems fair to assume that the time limit was established in order to give the proper officials of the government a fair opportunity to make such investigations as would inform the court in respect of the admissibility of the applying alien * * *. *I am of the opinion that where*

> *the petition for admission is made more than seven years after the act went into effect, to wit, September 26, 1906, it is not valid for any purpose.* [Italics supplied.]

In *Harmon* v. *United States*, 223 Fed. 425 (1915), the Circuit Court of Appeals for the First Circuit, following the rule applied in the *Yunghauss case, supra*, affirmed a decree of the District Court dismissing a petition for naturalization filed more than seven years after the act of 1906 went into effect.

In the case of *In re Lee* (D. C.), 236 Fed. 987 (1916), the question as to the meaning of the proviso contained in the first paragraph of section 4 of said act was again considered. The petitioner, an alien, had made and filed his declaration of intention before the enactment of the present naturalization law, and in conformity with the law then in force. More than seven years after the act took effect said alien filed his petition for citizenship, without having made any further declaration of intention. After quoting the first and second paragraphs of section 4 of the act, the court (pp. 988–89) said:

> The effect, and, in my opinion, the only purpose, of this proviso is to give to a declaration filed before such act became a law, and in conformity with the law in force at the date of such declaration, the same force and effect as if it had been filed in conformity with, and therefore subsequent to, the passage of such act. The alien seeking citizenship was still required to file a declaration of intention, but if such declaration had already been filed

in conformity with the former law, that declaration would take the place, and be accepted in lieu, of the particular kind of a declaration otherwise required, notwithstanding the fact that such aforesaid declaration was a different kind of declaration than that described and prescribed in said act. This, in my opinion, is the meaning of such proviso.

Having, however, thus provided for the making and filing of a declaration of intention in the manner and subject to the requirements mentioned, Congress, in the second paragraph of said section, provided, as a further requirement, that:

"Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate"

—a petition complying with certain formalities specifically prescribed. It seems to me that this language clearly evinces an intention to require that this petition shall be filed not more than seven years after the making of the declaration provided for in the first paragraph already referred to, whether such declaration was made and filed in the manner prescribed by this act or was made and filed before such act took effect, but in conformity with the law in force at the day of its filing, and therefore accepted as sufficient under the statute, although not made in the manner provided.

It is urged that the proviso quoted above exempts from the seven-year limitation declarations filed before the statute took effect. I can not agree with this contention. *I think*

> *that said proviso relates only to the sufficiency of the declaration of intention, and that its sole purpose is to give to a declaration filed before this statute became operative, if sufficient under the previous law, the same force and effect as if it had been filed in accordance with the requirements of such statute.* [Italics supplied.]

It is undoubtedly true that aliens who declared their intention to become citizens prior to the passage of the act of 1906 were not affected by the new law so far as their declaration of intention was concerned, but it is equally true that declarants under the old law were required to follow the provisions of the new law with regard to filing their petition for citizenship and the manner and form of proceeding therein outlined. Under the law in effect prior to 1906 there was no limitation upon the time within which a declarant should apply for final papers, and therefore it is evident that it was the intention of Congress to place a time limit upon all declarations, whether made before or after the act of 1906 went into effect.

The proviso of the first paragraph of section 4, as stated in the case of *In re Lee*, *supra*, relates only to the sufficiency of the declaration of intention, and its sole purpose is to give to such declaration, filed before the act became operative, the same force and effect as if it had been filed thereafter.

See also *United States* v. *Van Der Molen* (D. C.), 163 Fed. 650 (1908); *In re Poirot* (D. C.), 168 Fed. 456 (1909); and *In re Babjak* (D. C.), 211 Fed. 551 (1914).

In the case of *In re Wehrli* (D. C.), 157 Fed. 938 (1907), the petitioner, an alien, filed his petition on June 18, 1907, showing that his declaration of intention to become a citizen was filed on August 29, 1898. The court held that the language, "Not less than two years nor more than seven years after he has made such declaration of intention," is in the nature of a statute of limitation, and since it contains no language indicating a contrary intention must be construed as not to cut off the privilege of aliens who had made declarations of intention prior to its enactment to become citizens, and stated (p. 939):

> The true intent of Congress was that aliens declaring their intention to become naturalized after the passage of the act must file their final application within seven years after the filing of the declaration of intention, *and as to those who filed the declaration of intention before the enactment of the statute, they must make their final application within seven years from the enactment of the act.* [Italics supplied.]

In the case of *In re Goldstein et al.*, *supra*, the court (pp. 164–65) said:

> The government contends that the law allows the use of the old declaration of intention (which did not contain statements as to all the matters required in the present form) only in place of and to the extent to which a new declaration could be available under the present statute. It is evident that no peti-

> tion for final hearing can be made except under the provisions of the present law. An applicant who had filed one of the old declarations could use that at once, and hence could avoid waiting two years after filing a new declaration, but must still use the old form of declaration *as a basis for his compliance with the present law in other respects.* This satisfies the requirement that no new declaration will be needed in addition to the old one, *but does not mean that the old paper is of any greater effect, or has any wider use, than the new one.* [Italics supplied.]

In *Eichhorst* v. *Lindsey* (D. C.), 209 Fed. 708 (1913), the court adopted the view opposite to that supported by the foregoing authorities, and held that the provisions of the Naturalization Act of 1906, limiting the time for filing a petition for naturalization to seven years after the making of the declaration of intention, applies only to the declaration prescribed by the first paragraph of section 4, and does not in any way affect the rights of an alien who made his declaration prior to the date when the act became effective. By this reasoning the conclusion was reached that an old-law declarant was not bound by the seven-year limitation and that he could file his petition at any time.

In the later case of *In re Anderson* (D. C.), 214 Fed. 662 (1914), it was held that the words "such declaration of intention," in paragraph 2 of section 4 should be limited to declarations of intention made under the act of 1906, and that, where a declaration of

intention was made prior to the adoption of such act, it was available to sustain a petition for naturalization though not filed until after the lapse of more than seven years after the adoption of the act.

To substantially like effect are: *United States* v. *Lengyel et al.* (D. C.), 220 Fed. 720 (1915); *In re Valhoff* (D. C.), 238 Fed. 405 (1916); and *Linger* v. *Balfour*, 149 S. W. 795 (1912).

CONCLUSION.

In the recent case of *United States* v. *Ginsberg*, 243 U. S. 472, 475, this court said:

> No alien has the slightest right to naturalization unless all statutory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the Government may challenge it as provided in section 15 and demand its cancellation unless issued in accordance with such requirements. If procured when prescribed qualifications have no existence in fact it is illegally procured; a manifest mistake by the judge cannot supply these nor render their existence non-essential.

It is respectfully submitted that the first and second questions certified by the Circuit Court of Appeals should be answered in the negative, and that the third question should be answered in the affirmative.

WILLIAM C. FITTS,
Assistant Attorney General.

OCTOBER, 1917.

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